IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1952 of 2003
to
FIRST APPEAL No 1969 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKOR SHANAJI MANGAJI

Versus

SP.LAND ACQUISITION OFFICER

Appearance:
MR JM PATEL for MR AJ PATEL for appellants in all matters
MR ARUN D OZA, GP for Respondent in F.A. Nos. 1952 to 1960 of 2003 and MR KT DAVE, AGP for Respondent in F.A. Nos.1961 to 1969 of 2003

CORAM : HON'BLE MR.JUSTICE KSHITIJ R.VYAS
and
HON'BLE MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 08/10/2003

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE AKSHAY H.MEHTA)

Admit. Mr.K.T.Dave, learned AGP waives service of notice on behalf of respondent. Atthe request of the parties matters are finally heard today.

2. This group of appeals has been filed by the original claimants whose lands have been acquired for the public purpose, namely, Narmada Canal Project, Dholka Branch. The lands in question are agricultural lands and they are situated in village Santej, Kalol Taluka of District Mehsana.

For the purpose of acquiring the above lands, the Special Land Acquisition Officer, issued notifications under Section 4 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), on 21st February 1992 and under Section 6 of the Act on 11th August 1992. The claimants were issued necessary notice for lodging objections if they so desired and also for granting personal hearing to them. After hearing them and by complying with all the required formalities under the Act, the SLO made awards on 30th March 1994, awarding Rs.3/- per sq.mtr. for irrigated lands and Rs.2/- per sq.mtr. for unirrigated lands. This was against the claim of the appellants of Rs.100/- to Rs.200/- per sq.mtr.

Since the claimants were dissatisfied with the award of the SLO, they approached the Reference Court, i.e. the Court of learned Extra Assistant Judge, Mehsana by filing References Cases under 18 of the Act. These cases came to be numbered as Land Reference Cases Nos. 593/95 to 595/95, 597/95 to 610/95 and 1440/95.

The learned Judge, after considering the material placed before him, by way of oral evidence as well as documentary evidence, came to the conclusion that the award made by the SLO was inadequate and it was required to be enhanced. The Reference Court, therefore, enhanced the compensation and directed the respondent to pay to the claimants a total sum of Rs.15/- per sq.mtr. for all the lands together with all the benefits permissible under Section 23(1-A) and 23(2) of the Act.

It may be stated here that all the aforesaid Reference Cases were disposed of by the Reference Court by a common judgment dated 20th February 2001. It is this decision by the learned Extra Assistant Judge/Reference Court which is under challenge before us, in these appeals.

3. Mr.J.M.Patel, learned Advocate for Mr.A.J.Patel

appearing for the appellants has submitted that the compensation determined by the Reference Court at Rs.15/- per sq.mtr. was grossly inadequate and it is required to be enhanced. He has, further submitted that in respect of the agricultural lands of this very village which have been acquired earlier, this Court has awarded Rs.70/- per sq.mtr. For that purpose, he has placed reliance on the judgment delivered by this very Division Bench in the case of Thakor Bhavanji Jenaji v. Special Land Acquisition Officer, First Appeals Nos. 110 of 2002 to 125 of 2002 decided on 3rd September 2003.

Learned AGP Mr.K.T.Dave appearing for the respondent has tried to support the judgment of the trial Court and has submitted that considering the nature of the lands acquired, the amount of compensation determined by the Reference Court was just and proper.

4. We have carefully gone through the judgment of the Reference Court and also the judgment delivered by this Court in First Appeals Nos.110 of 2002 and its allied matters. On perusal of this judgment, we find that the lands in question are situated in village Santej and so are the lands forming the subject matter of the aforesaid First Appeals. It also appears that in respect of both these sets of lands, notifications under Section 4 and 6 were published on the same day, i.e. 21st February 1992 and 11th August 1992 respectively. In those cases also, the Reference Court had enhanced the compensation granted by the SLO which was Rs.3/- per sq.mtr. for irrigated land and Rs.2/- per sq.mtr. for non-irrigated land respectively and had awarded Rs.15/per sq.mtr. in all. After perusing the evidence on record in those matters, we have held that the amount of compensation awarded to the claimants by the Reference Court was inadequate and it was increased by additional sum of Rs.55/-, i.e. in all Rs.70/- per sq.mtr. Reverting back to the facts of the present case, we find no difference and the lands acquired in the present case are, in no way, inferior to the lands of earlier cases. We, therefore, can safely rely on and adopt the reasoning given by us rendered in First Appeal 110 of 2002 and its cognate matters for deciding the present appeals. Considering the overall material placed on record, in our opinion, the award of the Reference Court is required to be modified upwardly and the claimants are required to be paid the additional sum of Rs.55/- per sq.mtr., bringing the total amount of compensation to Rs.70/- per sq.mtr.

5. Learned Advocate Mr.J.M.Patel has further submitted that the Reference Court has committed a grave

error in not awarding interest on solatium and the benefit of 12% price difference on the amount which was awarded under Section 23(2) of the Act and under Section 23(1-A) of the Act. He has drawn our attention to paragraph 6 of the operative portion of the judgment of the trial Court, wherein the said benefits are denied to the claimants. In the submission of Mr.Patel, the Apex Court has, in a recent decision rendered in the case of Sundar v. Union of India, reported in 2001(3) GLH 446, laid down a law requiring the payment of interest on the solatium and the monetary benefits made available to the claimants under Section 23(2) and under Section 23(1-A) of the Act. The Apex Court has held that the expression "awarded amount" means all the amount of compensation worked out under Section 23 of the Act. It has clarified the position further by saying that:

> "We make it clear that the compensation awarded include not only the total sum arrived at as per sub-section (1) of S.23 but the remaining sub-sections thereof as well. It is thus clear from S.34 that the expression "awarded amount" would mean the amount of compensation worked out in accordance with the provisions contained in S.23 including all the sub-sections thereof."

In view of what has been laid down by the Apex Court in aforesaid decision, the conclusion reached by the Reference Court is required to be set aside and the appellants are required to be awarded interest at the rate of 9% per annum for the first year and 15% per annum for the subsequent years, on the amount awarded under Sections 23(2) and 23(1-A) of the Act. The appellants have claimed additional amount of Rs.60/- per sq.mtr. but in view of the foregoing discussion, additional amount of Rs.55/- sq.mtr. can be awarded as compensation to the appellants. We, therefore, direct the respondent to pay to the appellants compensation of additional amount of Rs.55/- per sq.mtr. Respondents will also pay all the permissible benefits available to the appellants under the Act including the amounts awardable under Section 23(1-A) and Section 23(2) of the Act together with interest at the rate indicated above.

The respondent are directed to deposit the additional amount within two months from the date of receipt of the writ of this order before the trial Court.

6. The net result is that the appeals are partly allowed with no order as to costs.

(Kshitij R. Vyas, J.)

(Akshay H. Mehta, J.)
Sreeram.